

# **2021 APAAC Annual Prosecutor Conference**

June 23 – 25, 2021



## **Examination of the Expert Witness**

Presented by:

**George Brauchler**

District Attorney for Colorado's 18th Judicial District

Distributed by:

ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL  
3838 N. Central Ave., Suite 850  
Phoenix, Arizona 85012

ELIZABETH BURTON ORTIZ  
EXECUTIVE DIRECTOR

You & Defense Experts



Most likely  
defense to  
**mass  
murder...**

**Self-defense?**

Intoxication?

**MENTAL  
HEALTH**

ATS shooter...

“Schizo\_\_\_\_\_”

Insanity

INSTRUCTION NO. 23

defense of insanity

insane at the time of the

commission of each act if:

manifested only by repeated criminal or otherwise antisocial conduct.

Similarly, "mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of

so diseased or defective in mind

at the time

incapable of distinguishing

right from wrong

"incapable of distinguishing right from wrong,"

The phrase "incapable of distinguishing right from wrong," as used in

as measured by a societal standard of

morality, even though the person may be aware

morality,

criminal. The phrase "incapable of distinguishing

Instruction 23, does not refer to a purely personal and subjective standard of

morality.

a condition of mind

caused by a mental disease or

defect that prevented him from forming a culpable

an essential element of a charged offense or of

defect

prevented him from forming

a culpable mental state

“mental disease or defect”  
only those severely abnormal  
mental conditions that grossly  
and demonstrably impair  
a person’s perception or  
understanding of reality

## Mental Health & CU

CX of MH  
“experts”

**What Cross  
Examination  
is NOT...**

Star of the show?



Star of the show?



**CX Tip:**  
**Your Demeanor**

- Boring is as boring does

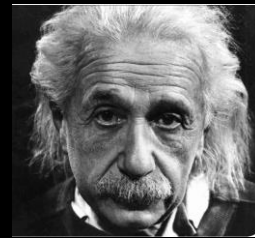


**DX Tip:**  
**Your Demeanor**

- Be conversational
- Your energy **vs.** their energy

**WHAT DOES  
VICTORY IN CX  
LOOK LIKE?**

**Fact of Life #1**  
Experts know stuff



**Fact of Life #1**  
You don't



**Achilles' Heel**



They **think**  
they're  
smarter  
than you

The general who loses a  
battle makes but few  
calculations beforehand.  
Thus **do many calculations**  
**lead to victory**, and few  
calculations to defeat.

Sun Tzu

**Step #1**  
Assessment

**Proactive or  
responsive  
Expert?**

Area of  
Expertise  
**Legitimate?**

**Do you need  
your own  
expert?**

## Step #2

### Preparation

Victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win.

Sun Tzu

### Preparation

Know your case

Read & Know  
Everything



### Preparation

Know their defense

Read & Know  
Everything



### Preparation

Know their experts

Read & Know  
Everything



Dr. Jonathan Woodcock

Dr. Robert Hanlon

Dr. Raquel Gur

**G2**



**Background**

**No such thing  
as too much  
information**

**Background**

**Check the CV**

**Background**

**Prior  
testimony?**

**When, for who, how  
many times, paid?**

**Prior Testimony**

**Fed Rule  
requires list**

**When, for who, how  
many times, paid?**

**Ask others  
(DAs, NDAA,  
DOJ, FBI,  
civil)**



## Transcripts

1  
2 DEFENDANT: CONNIE EL PASO COUNTY  
3 STATE OF COLORADO  
4 470 S. Tejon Street  
5 Colorado Springs, CO 80902  
6  
7 Plaintiff:  
8 PEOPLE OF THE STATE OF COLORADO  
9 Defendant: ROBERT MORRO  
10  
11  
12 For Plaintiff:  
13 KENNETH F. JEROME #2001  
14 JENNIFER M. JEROME #1003  
15 Deputy District Attorneys  
16 140 East Tennessee Avenue, Suite 500  
17 Colorado Springs, CO 80903  
18 719-524-6000  
19  
20 For Defendants:  
21 JAMES B. KING #0129  
22 JONATHAN HALLER #1009  
23 JAMES M. KELLY #0504  
24 Deputy Public Defenders  
25 415 South Ashcroft  
26 Colorado Springs, CO 80903  
27 719-478-1235  
28  
29 REPORTER'S TRANSCRIPT  
30  
31  
32 The above-entitled matter came on for jury trial on  
33 February 1, 2011, before the HONORABLE LARRY E. SCHWARTZ, Judge of  
34 the District Court, and a jury of twelve and the following  
35 proceedings were had.

# Get 'em...

...where do they practice?

## ...where have they testified?

**...other  
attorneys who  
have had them?**

# Read 'em

**Background**

Scout “experts”  
with...

**Background**

...your expert

**Background**

...other attorneys

**Past  
Publications**

Have **your  
expert** read  
them

What looks  
**funny** to  
them?

# What publications are **legit**?

## Check the CV

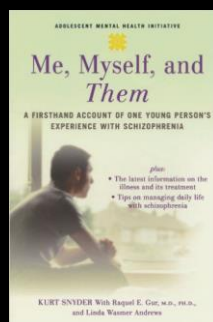
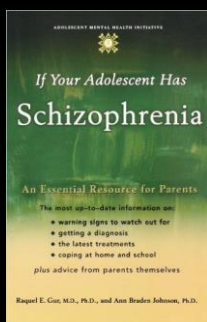
- Lectures-handouts
  - Content
  - For which organizations (bias)
  - Find the brochure/flier: who else is teaching (bias)

## Check the CV

- **Publications**
  - Books, **Chapters**
  - Peer Reviewed
  - Articles**
    - Which **publications**?
  - Subject matter

**You** read  
them

## Books: Dr. Raquel Gur



**“A call to  
action”**

## Check the CV


| DENMAN JUNIOR HIGH SCHOOL SAN FRANCISCO |                    |      |            |      |            |      |            |           |           |
|---|--------------------|------|------------|------|------------|------|------------|-----------|-----------|
| Name of School                          |                    |      |            |      |            |      |            | Spring 19 |           |
| Pupil's Last Name                       |                    |      |            |      |            |      |            | Grade     |           |
| First Name                              |                    |      |            |      |            |      |            | Home Room |           |
| RD                                      | Course & Number    | ROOM | 1st Report |      | 2nd Report |      | 3rd Report |           | FINAL     |
|   |                    |      | Sch.       | Cit. | Sch.       | Cit. | Sch.       | Cit.      | Sch. Cit. |
| 1.                                      | English            | 202  | A          | E    | A          | F    | A          | F         | A         |
| 2.                                      | Social Studies     | 200  | A          | E    | A          | F    | A          | F         | A         |
| 3.                                      | Physical Education |      | A          | S    | A          | S    | A          | S         | A         |
| 4.                                      | Math               | 212  | B          | S    | B          | S    | B          | S         | B         |
| 5.                                      | Health Training    | 181  | A          | E    | A          | F    | A          | F         | A         |
| 6.                                      | Science            | 207  | A          | E    | A          | F    | A          | F         | A         |
| 7.                                      |                    |      |            |      |            |      |            |           |           |
| Honor Points                            |                    |      | 10.5       |      | 15.5       |      | 10.5       |           |           |
| Home Room Citizenship                   |                    |      | E          |      | E          |      | E          |           |           |
| Days Absent                             |                    |      | 0          |      | 0          |      | 0          |           |           |
| Times Tardy                             |                    |      | 0          |      | 0          |      | 0          |           |           |
| Signatures:                             |                    |      |            |      |            |      |            |           |           |
| Home Room Teacher                       |                    |      | Principal  |      |            |      |            |           |           |

## Check the CV

- Degrees
  - In what?
  - From which school?
  - When?

## Professional organizations, affiliations

## Check online

|   |  |
|---|--|
|    | <b>Robert E. Hanlon, PhD</b><br>Associate Professor<br>Law and<br>Biology<br>(http://www.neurology.ucla.edu/~hanlon/)                                  |
|   | <b>Education</b><br>M.D. (1988)<br>M.S. (1988)<br>B.S. (1988)<br>University of California Medical Center, Los Angeles (UCLA)<br>Neuropsychology (1988) |
| <b>Academic and Other Professional Activities</b>   |  |
| Stress Disorder/Violent Behavior<br>(http://www.neurology.ucla.edu/~hanlon/)  |  |
| Law Office of Public Defender (Cook County Government)<br>National Legal Aid & Defender Association (NLADA)                         |  |
| Hanlon R.E. 2013. Survived by One: The Life and Mind of a Family Man Murderer.<br>Cambridge, MA: Southern Illinois University Press |  |

\$\$\$

**Gigolo**

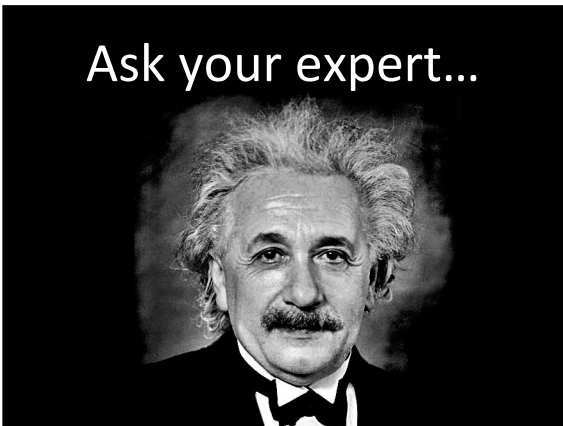
**CAUTION**

What about **your**  
expert?

**Get your**  
own  
**expert**

**Get a**  
good  
**expert**

Ask your expert...



...about their expert



## Background

What makes them such a **superstar**?



## Background

Their worst beating ever?



How can they be attacked?



## Step #3

When to call **your** MH expert?

## Step #4

Defense offers them as “an expert in **WHAT**”

## Step #4

Was that the area **endorsed**?

## Step #5

Execution:

Voir Dire?

Yep.

Tactically  
proficient

1<sup>st</sup>  
impressions  
matter

Attack **their**  
**credibility**

Do they  
expect it?

# *Their* Direct

What are they  
preparing?

Thus, what is of  
supreme importance  
in war is to a@ack the  
enemy's strategy.

Sun Tzu

## DX is a dance

- Choreography  
is the key to a  
successful  
dance
- Comfort
  - Def A@y's
  - Their expert's



## On the other hand...

...voir dire can  
make their dance  
less pre@y...

## Voir Dire

Area of  
attack?

## Voir Dire

Bias &  
Qualifications



**Voir Dire**

**Testimonial  
Experience**

**Prior Testimony**

**Too little?**

**Not an expert?  
Untrustworthy?**

**Prior Testimony**

**Too much?**

**See “Gigolo”**

**Jonathan  
Woodcock**

**Weak prior  
testimony &  
bias (objection?)  
(Woodcock)**

**Qualified  
“several  
hundred  
times”**

**Robert Hanlon**

**Bias:**  
**“almost  
exclusively”  
(Hanlon)**

**Raquel Gur**

**Past testimony:**  
**lack of expertise  
(Gur)**

**Check the CV**

- Licensed by state
- **Board Certified?**
  - Is there one?
  - **Forensic?**

**Board  
Certification  
(Gur)**



Object to  
them as  
“**expert?**”

Not usually

If they were  
completely  
nuts...

Now what?

**Limit** scope  
of **opinion**  
(**Hanlon**)

**Limit**  
materials  
reviewed

**GIGO:**  
documents not  
considered  
(Hanlon)

**Further dismantling**  
Which  
strategies  
should I use?

## Strategies

- **Bias:** control by defense
- Reports
- **GIGO**
  - Method used/ omissions
- **Substantive attack**

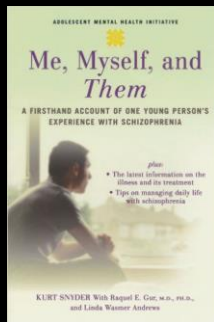
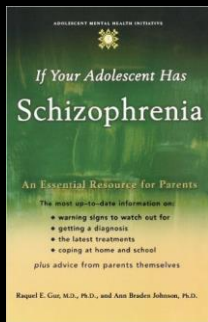
**Bias:**  
**Control by**  
**defense**

**Control by**  
**defense:** family  
interviews  
(Hanlon)



## Part 2: Control by defense- family interviews (Hanlon)

### Books: Dr. Raquel Gur



### Books: Dr. Raquel Gur

need to rely entirely on experts who were hired by one of the parties. Even without willful dishonesty, an expert's opinion can be influenced by the side that called for the testimony. The theoretical weights used in the

Acknowledging these complications—the volatile nature of adolescence and the possible presence of coexisting conditions, also called *comorbidities*—many psychiatrists prefer to make the diagnosis of schizophrenia on the basis of information provided to them by one or both parents and possibly by the patient's friends. Patients themselves will be able to describe aspects of their experience as well, but because those with schizophrenia may find it difficult to report some or all of their symptoms and behavior accurately, it is extremely helpful to have information from the perspective of parents and friends to round out the picture. In addition, friends may be especially helpful, and perhaps more accurate even than parents, in reporting spe-

## Reports

**Report**

Did they  
generate a  
report?

**Report**

Read it.

**Report**

Multiple times.

**Report**

Have your  
expert(s)  
read it.

**Report**

Check their  
report's  
citations

**Report**

Interview  
them...if you  
are allowed?

## Report

Do not give  
them your  
cross?

## Report

Ask lotsa'  
questions

## Report

Play dumb

## Get info



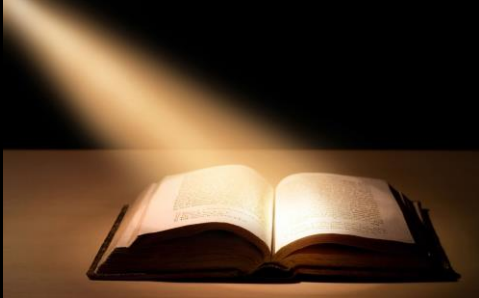
Do **not** give info



## Report Technique



## Report Technique



## Report

If not, why not?

## Report

That's sketchy.

## Report

Who told them not to write a report?

No report  
(Hanlon)

## GIGO

Give them an escape hatch





**GIGO**

**Garbage IN**

**GIGO**

**Garbage OUT**

**Missing,  
incomplete, or  
erroneous  
information**

**GIGO:  
girlfriend?  
(Hanlon)**

**GIGO: Videos?  
Woodcock  
report?  
(Hanlon)**

**From the  
patient/witness**

From the  
**other attorney**

“the **other attorney**  
is making you look  
bad”

**Poor  
performance:  
2<sup>nd</sup> interview  
(Woodcock)**

**Attack**

**Sloppy**

**Substance**

**CAUTION**

He who knows when  
he can fight and  
when he cannot, will  
be victorious.

Sun Tzu

## How to Cross Examine: Structure

In war, then, let your  
great object be victory,  
not lengthy campaigns.

Sun Tzu

### Structure of CX:

- Be the XXXXX (your school here) J  
– 3-4 points
- Not all points are equal
- Not every point needs to be made
- Waters down significance of good points
- Jurors/members lose interest

### Strategy #1

Get  
concessions

### Structure of CX: Order

- **1<sup>st</sup>: Favorable testimony**
- **2<sup>nd</sup>: Destructive cross**

## Favorable CX: Concessions

- Don't punch in nose right away
  - Witness expects it
- Psychologically, get W to let their guard down
- Train W to answer YES or NO: easy ques,ons

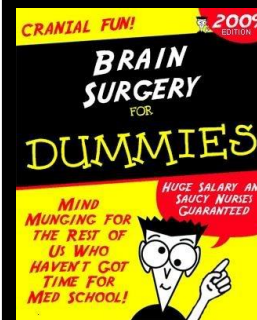
Bring war material with  
you from home, but  
forage on the enemy.

Sun Tzu

## Favorable CX: Concessions

- Elicit favorable tes,mony
- Recoun,ng favorable DX tes,mony
- Secure tes,mony that corroborates your case
- Elements of the charge/spec ✓
- Things the expert must admit, or
- things Zhey'll look foolish not admi\ng

## Books is goodly



Literature  
they  
trust?

DIAGNOSTIC AND STATISTICAL  
MANUAL OF  
MENTAL DISORDERS  
FIFTH EDITION  
DSM-5

AMERICAN PSYCHIATRIC ASSOCIATION

CLOSED-HEAD  
INJURY:  
A  
CLINICAL  
SOURCE BOOK  
FOURTH EDITION

PETER G. BERNAD

## Books

Melvin  
Pickering

### Strategy #3

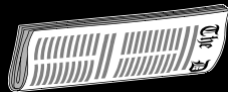
**Distinguish** your  
facts/accused

### Control the Expert



### Transi,ons/Headlines

- Helpful to panel, judge
- **It's OK to tell the witness where you're going at the macro level**



**"You use Leading Questions, isn't that correct?"**

#### RULE 611: **MODE AND ORDER OF INTERROGATION AND PRESENTATION**

- (c) Leading Ques,ons. Ordinarily leading ques,ons should be permiZed on cross-examina,on.

The clever combatant imposes his will on the enemy, but does not allow the enemy's will to be imposed on him.

**Sun Tzu**

How do I force the  
"Expert" to answer  
the questions the  
way I want them to?

Is it Yes or No questions?

Would you eat  
them on a  
boat?



Vary your style, sister...

*Correct?*

Vary your style, sister...

*Isn't that right?*

Vary your style, sister...

*Isn't that true?*

Vary your style, sister...

*You'd agree  
with me...*

Vary your style, sister...

*It would be **fair**  
to say...*

Vary your style, sister...

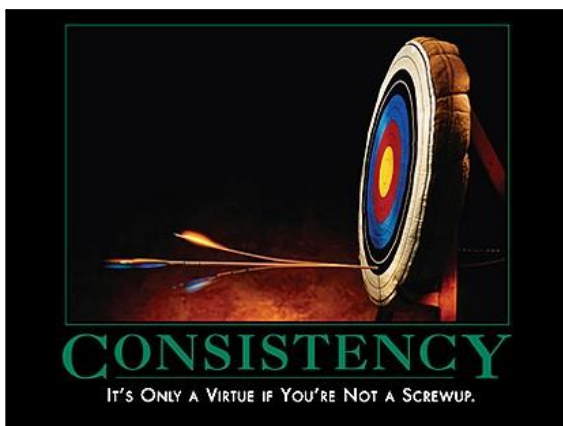
*Huah?*

Vary your style, sister...

*Can I get a  
Hell-yeah?*

Vary your style, sister...

- Repe,,on is is painful
- Try inflec,on...



## LBQs

- **One** ques,on,  
**one** fact
- Momentum & Control
- **Example...**



# Control Techniques

## Control techniques: DON'Ts

- Don't argue/fight with witness 🗣️
- Don't interrupt or talk over the witness 🗣️
- Avoid crying to mommy or daddy?  
— *"Make him answer my quesAon!!!"* —  
sniffle, sniffle, foot stomp 🗣️
- You are an officer. 🗣️
- Take charge!

## Control techniques: DON'Ts

- Avoid the Supremes
- *Stop...*
- ...in the name of love...
- ...before you sink my case...
- *Why cut off the witness?*



## Control techniques:

Remember your  
manners:  
*"thank you"*

## Control techniques:

Mea culpa:

*"I'm sorry, I must not  
have asked a very  
good question. What I  
meant to ask was..."*

## Control techniques:

¿Comprendes?:  
*"Did you  
understand my  
question?"*



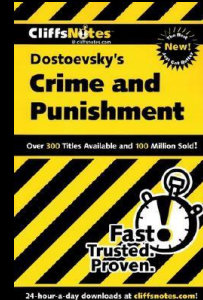
Control techniques:

**AVOID:**

***"I guess so"***  
**answers**

Control techniques:

**Cliff Notes:**  
***"so, the  
answer to  
my  
question is  
Yes?"***



Control techniques:

**Helpful:**

***"You'll have plenty of time  
to answer your attorney's  
questions about that  
(DEFENDANT ONLY), but  
my question is..."***

Control techniques:

**Show that you've  
stopped  
listening/caring**

**—Drink water, go to your table,  
look around, then ask...**

Control techniques:

***"is there anything  
else you want to  
add to that?"***



**ATTITUDE**  
It takes 43 muscles to frown and 17 to smile,  
but only three for proper trigger squeeze.

**Dr. Jonathan Woodcock**

**Dr. Robert Hanlon**

**Dr. Raquel Gur**

**4 Things in  
Common**

**Hand-picked**

**Not Forensic**

**Exclusively for  
Defendants in  
Criminal Cases**

**Changed their  
practice to suit  
DEF's attorneys**

**Dr. Jonathan  
Woodcock**

**Jonathan Woodcock**

**NEVER**

**BOARD CERTIFIED IN  
FORENSIC PSYCHIATRY**

**Jonathan Woodcock**

**NEVER**

**COURT-APPOINTED**

**Jonathan Woodcock**

**NEVER**

**WORKED FOR  
PROSECUTION**

**Jonathan Woodcock**

**EXCLUSIVELY  
FOR CRIMINAL  
DEFENDANTS**

**Jonathan Woodcock**

**INCLUDING THIS  
SAME DEFENSE  
ATTORNEY**

Jonathan Woodcock

“QUALIFIED AS  
AN EXPERT 100~~0~~s  
OF TIMES”

Jonathan Woodcock

ONLY CV NOT  
ADMITTED BY  
DEF ATTORNEYS

Jonathan Woodcock

JULY 24, 2012

Jonathan Woodcock

UNMEDICATED

Jonathan Woodcock

ALLOWED DEFENSE  
ATTORNEY TO  
INFLUENCE HIS  
EVALUATION

Jonathan Woodcock

DEFENSE  
INVESTIGATOR  
PRESENT DURING  
INTERVIEW...

Jonathan Woodcock

...**OFFERING** AT  
LEAST ONE  
**ANSWER** TO  
DEFENDANT

Jonathan Woodcock

NO DISCUSSION  
OF **PLANNING** OF  
MASS MURDER

Jonathan Woodcock

NO DISCUSSION  
OF **BOOBY-**  
**TRAPPING**  
APARTMENT

Jonathan Woodcock

NO DISCUSSION  
OF **CRIME**

Jonathan Woodcock

NOT TOLD ABOUT  
"**NOTEBOOK**" BY  
DEFENSE

Jonathan Woodcock

DID **NOT** RETURN  
JAIL  
PSYCHIATRIST'S  
**REPEATED** CALLS...

Jonathan Woodcock

**...AT THE REQUEST  
OF DEFENDANT'S  
ATTORNEY**

Jonathan Woodcock

**ONLY 2:45**

Jonathan Woodcock

**“Catatonic, except  
for...”**

Jonathan Woodcock

**RIDING BIKE TO  
SCHOOL**

Jonathan Woodcock

**EVERYDAY**

Jonathan Woodcock

**ATTENDING  
LABORATORY  
TIME**

Jonathan Woodcock

TURNING IN ALL  
ASSIGNMENTS  
**ON TIME**

Jonathan Woodcock

STRONG GRADES  
ON WRITTEN  
WORK

Jonathan Woodcock

SHOPPING

Jonathan Woodcock

PAYING RENT  
AND BILLS ON  
TIME

Jonathan Woodcock

WORKING OUT  
REGULARLY

Jonathan Woodcock

FIT HIS  
CATATONIA IN  
**"OVER LUNCH"**

**Dr. Robert  
Hanlon**

Robert Hanlon

**NEVER**

BOARD CERTIFIED IN  
FORENSIC PSYCHOLOGY

Robert Hanlon

**NEVER**

COURT-APPOINTED

Robert Hanlon

**NEVER**

WORKED FOR  
PROSECUTION

Robert Hanlon

~~**ALMOST**~~  
**EXCLUSIVELY**  
FOR CRIMINAL  
DEFENDANTS

Robert Hanlon

INCLUDING THIS  
**SAME** DEFENSE  
ATTORNEY



Robert Hanlon

**Did not interview  
parents...**

Robert Hanlon

**...even though he  
wanted to...**

Robert Hanlon

**...thought it was  
important to do  
SO...**

Robert Hanlon

**...it is his normal  
practice...**

Robert Hanlon

**...he asked  
defense attorneys  
for it...**

Robert Hanlon

**“capitulated”**

**Dr. Raquel Gur**

**Dr. Raquel Gur**

**NEVER**

~~BOARD CERTIFIED IN~~  
~~FORENSIC PSYCHIATRY~~

**Dr. Raquel Gur**

**NEVER**

**COURT-APPOINTED**

**Dr. Raquel Gur**

**NEVER**

**WORKED FOR  
PROSECUTION**

**Dr. Raquel Gur**

**EXCLUSIVELY  
FOR CRIMINAL  
DEFENDANTS**

**Dr. Raquel Gur**

Did not interview  
parents...

Dr. Raquel Gur

...even though  
she wanted to...

Dr. Raquel Gur

...thought it was  
important to do  
so...

Dr. Raquel Gur

...it is her normal  
practice...

Dr. Raquel Gur

...her published  
recommended  
practice...

Dr. Raquel Gur

...because their  
“calendars didn’t  
match up.”

Dr. Raquel Gur

Until November  
2014

Dr. Raquel Gur

2 months **before**  
**jury selection**

Dr. Raquel Gur

Did not video  
record the  
evaluation...

Dr. Raquel Gur

...even though she  
is **“delighted”** when  
it is recorded...

Dr. Raquel Gur

...**“commonly”**  
**video records in**  
**her practice...**

Dr. Raquel Gur

...**video recorded**  
**for the last time**  
**she testified...**

Dr. Raquel Gur

...**discussed it**  
**with** defendant's  
attorneys.

**Dr. Raquel Gur**

**13.5 hours**

**Dr. Raquel Gur**

**Only 12 pages of  
notes**

**Dr. Raquel Gur**

**Before rendering  
14 page opinion in  
June 2013**

**Finis**

Pax foras, bitches.